

# **EXHIBIT 5**

**From:** [Marty Sipple](#)  
**To:** [Mark R. Suter](#); [Kaiser, Steven J.](#); [Eric L. Cramer](#); [Varsity Litigation](#); [Robert Falanga](#); [Kobelah Bennah](#); [Joseph Saveri](#); [Ronnie Spiegel](#); [Kevin Rayhill](#); [Elissa A. Buchanan](#); [Anna-Patrice Harris](#); [Sofia Jordan](#); [Gurjit Aulkh](#); [Sean Cooper](#); [Dan Nordin](#); [dhedlund@gustafsongluek.com](#); [Daniel E. Gustafson](#); [hartley@hartleyllp.com](#); [Jason Lindner](#); [rick@paulllp.com](#); [Van D. Turner](#); [lwang@gustafsongluek.com](#); [ggarrison@bakerdonelson.com](#); [nberkowitz@bakerdonelson.com](#); [mmulqueen@bakerdonelson.com](#); [bgaffney@lockelord.com](#); [pcoggins@lockelord.com](#)  
**Cc:** [Richard Doran](#)  
**Subject:** RE: Varsity Antitrust Litigation - Elza and LeTard subpoenas  
**Date:** Thursday, October 14, 2021 5:32:44 PM

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Mark,

Good afternoon. Confirming our telephone conversation earlier today, Mr. Elza is available to be deposed on November 16 and Mr. LeTard is available on November 22. I will speak to each of them about when they can feasibly respond to the document production components of the subpoenas, understanding that you would like the documents at least two weeks before the respective depositions.

Mark, please contact me right away if any of the foregoing is inconsistent with your understanding of the situation. Thank you for your cooperation.


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**From:** Mark R. Suter <msuter@bm.net>  
**Sent:** Monday, October 11, 2021 2:36 PM  
**To:** Marty Sipple <msipple@ausley.com>; Kaiser, Steven J. <skaiser@cgsh.com>; Eric L. Cramer <ecramer@bm.net>; varsitylitigation@cuneolaw.com; Robert Falanga <Robert@FalangaLaw.com>; Kobelah Bennah <Kobelah@FalangaLaw.com>; Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>; Kevin Rayhill <krayhill@saverilawfirm.com>; Elissa A. Buchanan <EABuchanan@saverilawfirm.com>; Anna-Patrice Harris <aharris@saverilawfirm.com>; Sofia Jordan <sjordan@saverilawfirm.com>; Gurjit Aulkh <GAulkh@saverilawfirm.com>; Sean Cooper <sean@paulllp.com>; Dan Nordin <dnordin@gustafsongluek.com>; dhedlund@gustafsongluek.com; Daniel E. Gustafson <dgustafson@gustafsongluek.com>; hartley@hartleyllp.com; Jason Lindner <lindner@hartleyllp.com>; rick@paulllp.com; Van D. Turner <vturner@bruceturnerlaw.net>; lwang@gustafsongluek.com; ggarrison@bakerdonelson.com; nberkowitz@bakerdonelson.com; mmulqueen@bakerdonelson.com; bgaffney@lockelord.com; pcoggins@lockelord.com  
**Cc:** Richard Doran <rdoran@ausley.com>

**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Hello Marty:

Please confirm whether Mr. Elza would be available for a remote deposition on November 16<sup>th</sup> and Mr. Letard available for the same on November 22<sup>nd</sup>. The depositions will be conducted virtually, utilizing a secure web-based remote-access deposition platform and electronic exhibit software. The plaintiff groups from all three cases have already coordinated on these dates. If the witnesses are available, we can send appropriately revised notices.

Thank you,

Mark

**Mark R. Suter / Associate**

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**Cc:** Richard Doran <[rdoran@ausley.com](mailto:rdoran@ausley.com)>

**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Good morning all.

As noted, my firm will be representing Mr. Elza and Mr. LeTard with respect to the various subpoenas that have been issued in this litigation. It is my understanding that the Judge has ordered coordination of this discovery. Can the lawyer from each plaintiff primarily responsible for dealing with the Elza and LeTard subpoenas please respond to this email and we can begin the process of

establishing a schedule for all of this? I believe that some of the deadlines in the subpoenas had already passed before service or are imminent.

I look forward to working with all of you on this. Thank you.


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**From:** Kaiser, Steven J. <[skaiser@cgsh.com](mailto:skaiser@cgsh.com)>

**Sent:** Monday, October 11, 2021 10:55 AM

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**Cc:** Marty Sipple <[msipple@ausley.com](mailto:msipple@ausley.com)>

**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Counsel:

Permit me to introduce you to Marty Sipple, who is representing Mr. Elza and Mr. Letard.

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**Steven J. Kaiser**

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**Sent:** Thursday, October 7, 2021 5:38 PM

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**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Steve,

Please see the attached proof of service for Brian Elza and Tres Letard. We will let you know the dates of the depositions once they are finally scheduled.

Mark

**Mark R. Suter / Associate**

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**From:** Eric L. Cramer <[ecramer@bm.net](mailto:ecramer@bm.net)>

**Sent:** Tuesday, October 5, 2021 2:58 PM

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**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

That is correct. We will provide a new date once we have it.

--Eric

**Eric L. Cramer / Chairman**

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**Sent:** Tuesday, October 5, 2021 1:22 PM

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**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Mark (and all) – insofar as we haven’t heard from you, we understand Mr. Elza’s deposition is not taking place as noticed. If that is incorrect, please let us know immediately.

Thank you.

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**Steven J. Kaiser**

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**Sent:** Wednesday, September 29, 2021 11:46 AM

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**Subject:** RE: Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Steve,

The deposition dates for Elza and Letard are presently unconfirmed, but we will follow up with additional information once available.

Further, Plaintiffs in all three cases have been coordinating on discovery, including deposition scheduling. Given that each deposition will be for three distinct cases, involving certain non-overlapping alleged misconduct in different markets against different defendants, additional deposition time will be needed to accommodate non-duplicative questions by counsel in all three cases where necessary. To that end, counsel from the three cases have drafted the attached proposed stipulation regarding deposition timing. Please let us know if Varsity and USASF would agree, and please also coordinate with Varsity's co-defendants in the related cases to confirm whether this works.

Thanks,

Mark

**Mark R. Suter / Associate**

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**Sent:** Monday, September 27, 2021 5:01 PM

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**Subject:** Varsity Antitrust Litigation - purported Elza and LeTard subpoenas

Counsel:

We are in receipt of subpoenas that purport to be directed to Brian Elza and Tres LeTard in the Fusion Elite and American Spirit cases. The subpoenas did not include proofs of service.

Will counsel for Fusion Elite and American Spirit confirm whether they have served the subpoenas on their targets and, if so, provide the evidence of service? Also, will counsel for Fusion Elite and American Spirit confirm whether Mr. Elza or Mr. LeTard have agreed to sit for deposition on the indicated dates?

In addition, we wanted to make it clear that in our view of the Court's directions and coordination order, **there will not be more than one deposition of any individual in the three cases without leave of Court, and all parties, including Plaintiffs, should govern themselves accordingly.** In other words and for the avoidance of doubt, any deposition of Mr. Elza or Mr. LeTard that may occur as a result of these subpoenas or otherwise will be the deposition for the Jones matter as well. The parties in Jones will not be afforded another opportunity to depose Mr. Elza or Mr. LeTard or any other individual who is deposed in the Fusion Elite or American Spirit matters. The parties in Fusion Elite will likewise not be afforded another opportunity to depose an individual noticed for deposition in the Jones or American Spirit matters. The parties in American Spirit will likewise not be afforded another opportunity to depose an individual noticed for deposition in the Fusion Elite or American Spirit matters.

If and when Mr. Elza or Mr. LeTard are deposed, all parties, including Plaintiffs in Jones, will need to discuss an appropriate allocation of time.

We trust this is consistent with everyone's understanding and expectations, but if not, please let us know. Thank you.

Best regards,

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